5. Respondent's arguments for avoiding certiorari on the important comity issue presented are equally unavailing. Respondent's threshold contention that "[p]rinciples of international comity are inapplicable to the procedure for determining foreign law" (Opp. 11) is baseless misdirection. It is baseless because the cases cited by Respondent, *see, e.g.*, *Aktiebolag v. Andx Pharmaceuticals, Inc.*, 208 F.R.D. 82, 100 (S.D.N.Y. 2002) (cited at Opp. 17 n.6), as well as by FinOne (Pet. 14-15), demonstrate that comity extends to the deference owed to a foreign court's interpretation of its own nation's laws. Moreover, comity is squarely implicated even under Respondent's cramped view. Respondent concedes that comity concerns arise when "injunctions [are] directed to a foreign sovereign or foreign citizens on foreign soil." (Opp. 20). That is exactly the case here. In response to a devastating financial crisis, the government of Thailand issued an injunction to FinOne along with numerous other Thai finance companies, suspending their operations and prohibiting all payments of outstanding debt. The Second Circuit undermined the Thai government's orders, thwarted its authority, and effectively invalidated an injunction directed to a Thai corporation on Thai soil.

Regardless, Respondent's overly narrow view of comity is misdirection because Respondent ultimately concedes that in "appropriate circumstances" "federal courts may afford some degree of deference to a foreign court's interpretation of its laws." (Opp. 22 n.11). Indeed, the very case LBSF cites, *Films by Jove*, expressly holds that the mere fact that a decision is a non-binding civil law precedent "is not, in itself, a sufficient ground for disregarding the legal conclusions articulated" therein. 250 F. Supp. 2d at 196. As the Second Circuit gave no reason for disregarding *Huaykaew* except that it was a non-binding civil law decision, this is precisely a case where, contrary to Respondent's contention (Opp. 22

n.11), deference is "required." The cases Respondent cites to suggest deference is inappropriate here (Opp. 22 & n.11) hold nothing of the sort. All involve circumstances where the court declined to follow foreign precedent after identifying persuasive data for concluding that foreign law was otherwise, an analysis the Second Circuit did not undertake.

6. Respondents are thus forced to advance the false premise that the Second Circuit did not disregard *Huaykaew* in derogation of comity, but rather distinguished the case on the facts (Opp. 23 nn.12-13). As explained (*see supra* pp. 2-3), this premise cannot withstand scrutiny. The Second Circuit reasoned that *if* it followed *Huaykaew*, the case would "raise a factual issue for resolution at trial" precisely because the case could not be distinguished in any material way. Pet. App. 34a-35a. The Court instead elected to defy comity and *not* follow *Huaykaew*.[5]

7. Both this error – failing to afford a foreign civil law decision proper deference – and the Second Circuit's failure to follow Rule 44.1 present questions that are not case-specific or confined to Thai law (Opp. 11). On the contrary, both present questions of great importance to the day-

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[5] Contrary to LBSF's contention (Op. 23 n.13), the Second Circuit's adoption of the Special Master's analysis that LBSF acted in good faith in *presenting* FinOne's Bills for setoff (Pet. App. 34a-35a) highlights the court's disregard, rather than its distinguishing, of *Huaykaew*. The court acknowledged that, had it followed *Huaykaew*, the issue would not have been *presentment*, but rather LBSF's bad faith in *acquiring* the Bills knowing of FinOne's insolvency, an issue neither the Special Master nor the Second Circuit addressed. Indeed, the Second Circuit advanced no reason for disregarding the reasoning of *Huaykaew*, nor could it have done so, since the principle upon which *Huaykaew* was based is the same as that articulated by the Second Circuit itself in *Modern Settings, Inc. v. Prudential-Bache Sec., Inc.*, 936 F.2d 640, 648 (2d Cir. 1991).

to-day work of the federal courts, which increasingly are called upon to resolve international civil disputes. This Court has never addressed Rule 44.1; the issue FinOne presents is clearly and properly presented; and the lower courts are divided on the question. The issue is now ripe for this Court to resolve. This Court, moreover, has frequently granted certiorari to demarcate the proper boundaries of international comity and related principles. *See, e.g., F. Hoffmann-La Roche Ltd. v. Empagran S.A.*, 542 U.S. 155 (2004); *Société Nationale Industrielle Aerospatiale v. United States District Court*, 482 U.S. 522 (1987); *Banco National de Cuba v. Sabbatino*, 376 U.S. 398 (1964). The Court should do so here to provide the guidance urgently needed to ensure that the laws of foreign nations are treated consistently and with due respect in the courts of this nation.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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June 2, 2006

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